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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ CRL.REV.P. 882/2005, CRL.REV.P. 883/2005, CRL.REV.P. 884/2005, CRL.REV.P. 885/2005, CRL.REV.P. 886/2005 & CRL.MA. NO. 12239/2005

April 21, 2007

KAMAL KISHORE & ORS ..... Petitioner
Through Mr. D.P. Sharma, Advocate

versus

THE STATE ..... Respondent
Through Mr. O.P. Saxena for State

CORAM:

Mr. Justice S. Ravindra Bhat

1. Whether reporters of local papers may be allowed to see the judgment.?

2. To be referred to the Reporter or not?

3. Whether the judgment should be reported in the Digest?

Mr. Justice S. Ravindra Bhat (Open Court)
FIR No. 225/04
U/S: 341/323/34 IPC
P.S: Prasad Nagar

1. The petitioners challenge an order on charge framed by the Additional Sessions Judge whereby they were charged of having committed offences under Sections 308/34 IPC.

2. The incident by which the complainant/ informant sustained injuries took place on 6th September, 2004. The informant, Dilip alleged that on 31.08.04,

one Kamal Kishore who was riding a motor cycle, had some altercation with him on account of over-speeding. Again on 06.09.04, in the evening apparently there was again some altercation between the two. It was alleged that subsequently the informant was attacked by Rahul with an iron rod and other accused, with knife, long sticks (*danda)* etc. It was alleged that he fell down unconscious. During the course of investigation, an MLC was made by the Ram Manohar Lohia Hospital. It recorded a simple injury on the forehead of the petitioner. He was also subjected to an X-ray of the skull. The reports were negative; no fracture was found. The MLC also did not record any other injury on the person of the said Dilip, the informant.

3. Counsel for the petitioner urged that the trial Court fell into error in framing charge at all because even if the totality of the allegations were to be taken into account, the material contradictions in the evidence and statements of the witnesses about the incident as well as the nature of injuries, would prove fatal to the prosecution story and as a result the petitioners are entitled to be discharged. Counsel contended that in truth the complainant/informant had fallen down and there was no question of his having beaten up as alleged.

4. The petition was opposed by learned counsel for the State, who submitted that the circumstances point out to grave suspicion about the petitioner's intention to attempt in committing an acts which were likely to result in death of the injured. At the stage of framing of charge, it was contended, that the Court has to satisfy itself as to the broad existence of ingredients and necessary factual elements. There were several facts in the case and the mere existence of a simple

injury would not detract from the petitioner's intention to inflict an injury of graver nature; as a consequence, the offence under Section 308 IPC was rightly attracted.

5. The trial Court, after considering the arguments, apparently went by the version of the eye witnesses who all deposed that the accused had reached the place armed with deadly weapons. However, it was also recorded that one witness Naveen stated that he had seen an assault "*marpit*" between the accused Rahul and Dilip.

6. The trial Court proceeded to charge the petitioners under Section 308, and it was of the view that weight to be attached to the medical evidence has to be considered after trial and not at the stage of charges. Although as a general proposition the statement is un-exceptionable, in this case it is not merely the medical evidence (MLC), but also the statement of the other witnesses and the injured who alleged that each petitioner had attacked him with the aid of one or the other weapon, which is significant. The injured and some witnesses in their statements had stated that each of the accused had weilded his weapon. The medical evidence, however, does not support this version, as there was only one simple injury. In view of these features, I am of the opinion that the framing of a charge under Section 308 was not appropriate. The evidence, as existing on the record, point to intention to cause some injury of a grievous nature as is evident from the nature of the weapons and the attack. But there is nothing indicative of attack of such severity warranting the charge under Section 308. This is a case where the charge would have to be appropriately modified to one under Section

326 IPC read with Section 511 IPC.

7. In view of the above discussion , the impugned order is hereby set aside. The matter is remitted to the trial Court for framing of charge in terms of the above findings, by altering the charge into ones under Sections 326 read with Section 511 IPC.

8. The petition is disposed off in the above terms.

S.RAVINDRA BHAT, J

APRIL 21, 2007
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